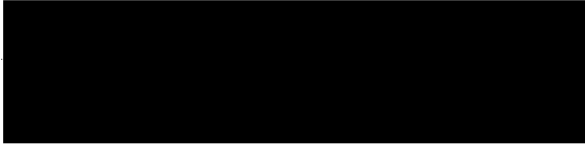




U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

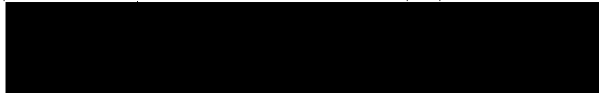


B3

File: WAC 96 138 51298 Office: California Service Center Date:

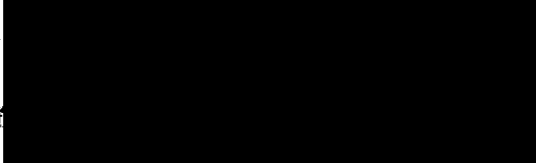
AUG 23 2000

IN RE: Petitioner:
Beneficiary:



Petition: Immigrant Petition for Alien Worker as an Outstanding Professor or Researcher pursuant to Section 203(b)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(B)

IN BEHALF OF PETITIONER:



Public Copy

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was initially approved by the Director, California Service Center. On the basis of new information received and on further review of the record, the director determined that the beneficiary was not eligible for the benefit sought. Accordingly, the director properly served the petitioner with notice of intent to revoke the approval of the immigrant visa petition, and the reasons therefore, and ultimately revoked the approval of the petition on May 1, 1998. The petitioner appealed. The Administrative Appeals Office ("AAO"), on behalf of the Associate Commissioner for Examinations, remanded the matter on procedural grounds. The director subsequently reopened the petition, and again revoked her approval on September 30, 1999. Although the AAO had instructed the director to certify its decision to the AAO, the decision reached the AAO only after the petitioner filed a second appeal. The director's latest decision will be withdrawn and the petition will again be remanded for further action and consideration.

The petitioner describes itself as a non-profit scientific research and educational corporation. It seeks to classify the beneficiary as an outstanding researcher pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(B). The petitioner seeks to employ the beneficiary permanently in the United States as a researcher. The director revoked the approval of the petition because (1) the petitioner did not appear to have consistently employed at least three full-time researchers, (2) the beneficiary, during his adjustment interview, seemed not to know the petitioner's address; and (3) it is not clear that the beneficiary's field of endeavor meets the regulatory definition of an academic field.

The director's initial notice of revocation, dated May 1, 1998, indicated that the petitioner had not responded to the notice of intent to revoke (dated January 12, 1998). On appeal from this decision, the petitioner demonstrated that it had, in fact, responded to the notice in a timely manner. The director's failure to consider this submission was one of several factors figuring in the AAO's first remand of this petition.

Following the AAO's January 4, 1999 remand of this petition, the director issued a decision which simultaneously reopened the petition and revoked its approval. This new notice of revocation, dated September 30, 1999, contains no mention of the documentation which the petitioner had submitted in 1998 in response to the notice of intent to revoke. In effect, the director reaffirmed the initial revocation decision, even though the record refutes a key ground for that revocation.

The AAO's 1999 remand order also contained the observation that the petitioner had not shown that the beneficiary's field constitutes an "academic field" as the Service defines that term at 8 C.F.R.

204.5(i)(2): "a body of specialized knowledge offered for study at an accredited United States university or institution of higher education." The director's second notice of revocation repeated the AAO's observation, citing it as a further ground for revocation.

8 C.F.R. 205.2(b) states, in pertinent part, "[t]he petitioner . . . must be given the opportunity to offer evidence . . . in opposition to the grounds alleged for revocation of the approval." In this case, the director did not issue a notice of intent to revoke which discussed the issue of the "academic field." Therefore, the director did not provide the required advance notice. While the AAO's remand order had contained this same observation, there is no mechanism in place for the petitioner to respond to remand orders. Therefore, the petitioner was not given an opportunity to offer evidence in opposition to this alleged ground for revocation.

For the above reasons, the director's decision cannot stand.

The director must consider the petitioner's evidence and explanations regarding its continuous employment of at least three full-time researchers. The director must also provide the petitioner with an opportunity to provide documentary evidence that the beneficiary's specialty constitutes an academic field. The director cannot revoke the approval of the petition except on proper notice.

The AAO has uncovered additional information which it believes to be of relevance with regard to the beneficiary's field. The AAO had previously concluded that the beneficiary's field was "orgonomy," defined in its earlier remand order. On appeal, the petitioner asserts that "orgonomy . . . was not [the petitioner's] only field of investigation." The petitioner argues that it conducts research in the broader field of "consciousness research," which "is now being seriously conducted and taught at many accredited academic institutions in the United States." The best-known university for which the petitioner submits actual evidence is the [REDACTED], which offers a "Graduate Program in [REDACTED] University documentation offers a description of this program which differs substantially from the petitioner's field of study. [REDACTED] documents state:

Although history of consciousness does not have formal tracks, it does emphasize certain topics and approaches in its seminars and research groups. These include comparative cultural studies, ethnographic methods, feminist theory, theory of contemporary visual culture, the historical analysis of social movements, political and economic analyses of late capitalism, historical and

cultural studies of race and ethnicity, psychoanalysis, lesbian and gay theory, semiotics, theory and history of religions, and social studies of science and technology.

The petitioning institution's promotional materials state that the petitioner conducts research in:

- consciousness and conscious intention effects,
- mental healing,
- mental effects on biophoton emission,
- mental effects on random event generators (including unconscious effects),
- orgone energy,
- effects of conscious intention and orgone energy on biophoton emission in seeds and seedlings
- and new paradigms such as the work of [the beneficiary].

The [REDACTED] is obviously a social studies-oriented program, whereas the petitioner represents its research in a scientific light. The common use of the term "consciousness" does not link the two programs together as a single academic field.

The petitioner observes that "meetings on consciousness and allied phenomena have been held at the University of Arizona," but this does not demonstrate that the University of Arizona offers courses and degrees in the areas studied at the petitioning institution. Similarly, expressions of interest by individual professors at major institutions do not reflect institutional endorsement of the areas in which the petitioner conducts its research.

It is clear from the regulations that the petitioner must establish not only that it, as an entity, conducts research in qualifying academic fields, but also that the beneficiary in particular works in a qualifying academic field; the regulations refer repeatedly to "the alien's academic field."

Publicly available promotional materials issued by the petitioner describe the beneficiary's work as "psychotronic healing," which the beneficiary himself "developed." These materials also state that the beneficiary described the "delineation of the biophysical interaction between the spiritual bodies and the physical body. One cannot successfully heal utilizing this method without a clear understanding of this interaction." The materials also indicate "[t]he method can be taught to others who are willing to devote several hundred hours in study and practice and have their brains and spiritual bodies 'transformed' by" the beneficiary.

If the beneficiary's field of endeavor, psychotronic healing, is a "new paradigm" which he himself invented and that he alone can teach (as the petitioner's own promotional materials indicate), then it would appear that psychotronic healing is not an academic

field, offered for study at accredited universities or institutions of higher learning.

As stated above, should the director arrive at a finding that the petitioner and beneficiary do not engage in a qualifying academic field, the director must set forth this finding in a notice of intent to revoke, to afford the petitioner the required opportunity to rebut that evidence.

For the above reasons, this matter will once again be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its petition within a reasonable period of time.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, regardless of the outcome, is to be certified to the Associate Commissioner for Examinations for review.